UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TAIYO CORPORATION

vs. CIVIL NO. 1:93-cv-2813-ODE

SHERATON SAVANNAH CORPORATION

ORDER

This civil suit seeking a declaration that a foreclosure sale was void is before the court on Defendant's emergency motion to dismiss and to cancel lis pendens. Plaintiff has filed a response opposing the motion.

Plaintiff's complaint contains the following allegations: Plaintiff was the owner/operator of a resort hotel known as the Savannah Sheraton Resort & Country Club ("hotel"). The hotel is located on Wilmington Island, which is part of Georgia's Chatham County. Defendant conveyed the hotel to Plaintiff in 1990, subject to a deed to secure debt in Defendant's favor.

On June 25, 1993, Plaintiff filed a bankruptcy petition in the United States Bankruptcy Court for the Southern District of Georgia. On July 16, Defendant filed a motion for relief from automatic stay or for dismissal ("stay relief motion"). On November 1, the bankruptcy court entered an order granting the stay relief motion. The bankruptcy court's order "purport[ed] to modify the

automatic stay provision of 11 U.S.C. §362 to permit Sheraton to exercise any and all of its remedies under the terms of the Deed to Secure Debt and under applicable state law." Complaint, ¶11.

Under the authority of the bankruptcy court's order, Defendant scheduled a foreclosure sale for December 7 and ultimately purchased the property at the sale for $6,500,000.00.

The heart of Plaintiff's argument is that the bankruptcy court's November 1 order was a nullity because the bankruptcy court did not separately enter judgment in Defendant's favor. Plaintiff thus argues that Defendant's purchase of the hotel at the foreclosure sale was "void ab initio," Complaint, ¶27, because the purported sale was in violation of the automatic stay. Since the foreclosure sale had no legal effect, Plaintiff asserts that "[t]he lawful title to the [hotel] remains vested in [Plaintiff]." Complaint, ¶29.

Plaintiff's theory is flawed. First, it is premised on the erroneous assumption that for the bankruptcy judge's order to have legal effect, a separate judgment had to be entered. However, the judge's order was entered on the bankruptcy court's docket as required by Fed.R.Bankr.P. 5003(a).[1] Once the order lifting the automatic stay was entered, Defendant was entitled proceed with the

[1]Plaintiff's complaint expressly alleges that "[o]n November 1, 1993, [the bankruptcy court] entered a Memorandum and Order on Motion for Relief from Stay [granting Defendant's stay relief motion]." Complaint, ¶11.

foreclosure.[2] Once the bankruptcy court had released the property from its jurisdiction, any claims of invalidity of the foreclosure sale would address state law, not federal bankruptcy law. The court notes that Plaintiff has made no arguments that the foreclosure sale was invalid under state law.

Secondly, and perhaps more importantly, if the Plaintiff's claim that the bankruptcy court never lost jurisdiction over the property is legally correct, then it would be crystal clear that this court would have no jurisdiction over this matter. Under 28 U.S.C. §1334(d), the United States District Court for the Southern District of Georgia, including the bankruptcy court for that district, would have exclusive jurisdiction over the subject property by reason of Plaintiff's bankruptcy filing in that district. There is no legal basis for an assertion that this court would have jurisdiction.

In accordance with the foregoing analysis, Defendant's Emergency Motion to Dismiss is GRANTED. Further, Plaintiff is ORDERED to cancel its lis pendens with respect to the subject property.

The court notes that on December 27, 1993, and January 13,

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[2]See Bankers Trust Co. v. Mallis, 435 U.S. 381, 384 (1978) (per curiam) ("The sole purpose of the separate-document requirement, which was added to Rule 58 in 1963, was to clarify when the time for appeal under 28 U.S.C. §2107 begins to run."). Whether Plaintiff can yet appeal the November 1 order is an issue it must take up with the United States District Court for the Southern District of Georgia. See 28 U.S.C. §158(a) ("An appeal [of a bankruptcy matter] shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving."). The issue has no relevance here.

1993, the Defendant filed the following motions, respectively: (1) Defendant's Motion for Sanctions (Non-Rule 11), and (2) Defendant's Motion for Rule 11 Sanctions: On January 14, 1994, Plaintiff filed a response to both motions. In view of the serious allegations set out in Defendant's motions, a hearing is

hereby set on the matter of sanctions for Friday, February 4, 1994, at 11:00 a.m. At that time, Plaintiff shall show cause why sanctions should not be imposed against it and its counsel, jointly and severally.

SO ORDERED this 24 day of January, 1994.

ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE